AMENDED IN SENATE APRIL 9, 2012

SENATE BILL No. 1281

Introduced by Senator Blakeslee

February 23, 2012

An act to amend ~~Sections 1026 and~~ *Section* 1027 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 1281, as amended, Blakeslee. Criminal procedure: not guilty by reason of insanity.

~~Under existing law, when a person accused of a crime is found to be insane at the time he or she committed the crime, a court is required to direct that the defendant be confined in a state hospital for the care and treatment of the mentally disordered or another public or private facility approved by the community program director, or may order the defendant to be placed on outpatient status.~~

~~This bill would require the medical director of a state hospital or treatment facility in which the defendant has been confined as an inpatient to monitor and evaluate the defendant to confirm that the defendant satisfies the criteria of being not guilty by reason of insanity. If the medical director of the facility finds that the defendant does not meet the criteria, or that initial evaluations failed to meet these criteria, then the medical director would be required to submit a report to the court that directed the confinement of the defendant. The court would be required to transmit copies of the report to the prosecutor and defense counsel, and would be authorized to convene a hearing to reconsider the question of whether the defendant was sane or insane at the time of the offense.~~

Under existing law, when a defendant pleads not guilty by reason of insanity, the court is required to appoint at least 2 psychiatrists or licensed psychologists to examine, investigate, and report on the defendant's mental status. The report is required to include certain information, including the psychological history of the defendant and the present psychological or psychiatric symptoms of the defendant.

This bill would require the report to also include the defendant's substance abuse history, his or her substance use history on the day of the commission of the offense, and a review of the police report of the offense.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. Section 1026 of the Penal Code is amended to read:~~

~~1026. (a) When a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, the defendant shall first be tried as if only such other plea or pleas had been entered, and in that trial the defendant shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the jury finds the defendant guilty, or if the defendant pleads only not guilty by reason of insanity, then the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury in the discretion of the court. In that trial, the jury shall return a verdict either that the defendant was sane at the time the offense was committed, or was insane at the time the offense was committed. If the verdict or finding is that the defendant was sane at the time the offense was committed, the court shall sentence the defendant as provided by law. If the verdict or finding is that the defendant was insane at the time the offense was committed, the court, unless it appears to the court that the sanity of the defendant has been recovered fully, shall direct that the defendant be confined in a state hospital for the care and treatment of the mentally disordered or any other appropriate public or private treatment facility approved by the community program director, or the court may order the defendant placed on~~

~~outpatient status pursuant to Title 15 (commencing with Section 1600).~~

~~(b) Prior to making the order directing that the defendant be confined in a state hospital or other treatment facility or placed on outpatient status, the court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be placed on outpatient status or confined in a state hospital or other treatment facility. No person shall be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. If, however, it appears to the court that the sanity of the defendant has been recovered fully, the defendant shall be remanded to the custody of the sheriff until the issue of sanity shall have been finally determined in the manner prescribed by law. A defendant committed to a state hospital or other treatment facility or placed on outpatient status pursuant to Title 15 (commencing with Section 1600) shall not be released from confinement, parole, or outpatient status unless and until the court which committed the person shall, after notice and hearing, find and determine that the person's sanity has been restored. Nothing in this section shall prevent the transfer of the patient from one state hospital to any other state hospital by proper authority. Nothing in this section shall prevent the transfer of the patient to a hospital in another state in the manner provided in Section 4119 of the Welfare and Institutions Code.~~

~~(c) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, order the defendant transferred to a state hospital or to another public or private treatment facility approved by the community program director. Where either the defendant or the prosecuting attorney chooses to contest either~~

~~kind of order of transfer, a petition may be filed in the court requesting a hearing which shall be held if the court determines that sufficient grounds exist. At that hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same procedures and standards of proof as used in conducting probation revocation hearings pursuant to Section 1203.2.~~

~~(d) Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.~~

~~(e) When the court, after considering the placement recommendation of the community program director required in subdivision (b), orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:~~

~~(1) The commitment order, including a specification of the charges.~~

~~(2) A computation or statement setting forth the maximum term of commitment in accordance with Section 1026.5.~~

~~(3) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.~~

~~(4) State Summary Criminal History information.~~

~~(5) Any arrest reports prepared by the police department or other law enforcement agency.~~

~~(6) Any court-ordered psychiatric examination or evaluation reports.~~

~~(7) The community program director's placement recommendation report.~~

~~(f) If the defendant is confined in a state hospital or other treatment facility as an inpatient, the medical director of the facility shall monitor and evaluate the defendant for 30 days to confirm that the defendant satisfies the criteria in subdivision (b) of Section 25. If the medical director of the facility finds, based on clear and compelling new evidence, that the defendant does not meet the criteria of subdivision (b) of Section 25, or that the initial evaluations of the defendant failed to meet the criteria of~~

~~subdivision (b) of Section 1027, then the medical director shall issue a report stating the finding, including the clear and compelling evidence that supports the finding. The report shall be submitted to the superior court from which the commitment was made, and the court shall transmit copies of the report to the prosecutor and defense counsel. The court, based on the report, may, but is not required to, convene a hearing to reconsider whether the defendant was sane or insane at the time of the offense. If the court finds that the defendant was sane at the time of the offense, the defendant shall be remanded to the custody of the sheriff until the issue of sanity is finally determined in the manner prescribed by law.~~

~~(g) If the defendant is confined in a state hospital or other treatment facility as an inpatient, the medical director of the facility shall, at six-month intervals, submit a report in writing to the court and the community program director of the county of commitment, or a designee, setting forth the status and progress of the defendant. The court shall transmit copies of these reports to the prosecutor and defense counsel.~~

~~(h) When directing that the defendant be confined in a state hospital pursuant to subdivision (a), the court shall select the state hospital in accordance with the policies established by the State Department of Mental Health.~~

~~(i) For purposes of this section and Sections 1026.1 to 1026.6, inclusive, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 5709.8 of the Welfare and Institutions Code.~~

~~SEC. 2.~~

SECTION 1. Section 1027 of the Penal Code is amended to read:

1027. (a) When a defendant pleads not guilty by reason of insanity the court shall select and appoint two, and may select and appoint three, psychiatrists, or licensed psychologists who have a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, to examine the defendant and investigate his or her mental status. It is the duty of the psychiatrists or psychologists selected and appointed to make the examination and investigation, and to testify, whenever summoned, in any proceeding in which the sanity of the defendant is in question. The

psychiatrists or psychologists appointed by the court shall be allowed, in addition to their actual traveling expenses, such fees as in the discretion of the court seems just and reasonable, having regard to the services rendered by the witnesses. The fees allowed shall be paid by the county where the indictment was found or in which the defendant was held for trial.

(b) Any report on the examination and investigation made pursuant to subdivision (a) shall include, but not be limited to, the psychological history of the defendant, the facts surrounding the commission of the acts forming the basis for the present charge used by the psychiatrist or psychologist in making his or her examination of the defendant, the present psychological or psychiatric symptoms of the defendant, if any, the substance abuse history of the defendant, the substance use history of the defendant on the day of the offense, and a review of the police report for the offense.

(c) This section does not presume that a psychiatrist or psychologist can determine whether a defendant was sane or insane at the time of the alleged offense. This section does not limit a court's discretion to admit or exclude, pursuant to the Evidence Code, psychiatric or psychological evidence about the defendant's state of mind or mental or emotional condition at the time of the alleged offense.

(d) Nothing contained in this section shall be deemed or construed to prevent any party to any criminal action from producing any other expert evidence with respect to the mental status of the defendant. If expert witnesses are called by the district attorney in the action, they shall only be entitled to such witness fees as may be allowed by the court.

(e) Any psychiatrist or psychologist appointed by the court may be called by either party to the action or by the court, and shall be subject to all legal objections as to competency and bias and as to qualifications as an expert. When called by the court or by either party to the action, the court may examine the psychiatrist or psychologist, as deemed necessary, but either party shall have the same right to object to the questions asked by the court and the evidence adduced as though the psychiatrist or psychologist were a witness for the adverse party. When the psychiatrist or psychologist is called and examined by the court, the parties may cross-examine him or her in the order directed by the court. When

called by either party to the action, the adverse party may examine him or her the same as in the case of any other witness called by the party.

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